

case on the record. The record shall include the notice, answer, transcript of testimony and exhibits, briefs, the initial decision or the decision of the Associate Director, the papers filed in connection with the appeal and opposition to the appeal and all other papers, requests and exceptions filed in the proceeding.

(b) OPM may adopt, modify, or set aside the findings, conclusions, or order of the presiding officer or the Associate Director.

(c) The final decision of OPM shall be in writing and include a statement of findings and conclusions, the reasons or basis therefor, and an appropriate order, and shall be served on the parties.

[33 FR 12498, Sept. 4, 1968, as amended at 34 FR 17618, Oct. 31, 1969]

Subpart L—Disability Retirement

SOURCE: 58 FR 49179, Sept. 22, 1993, unless otherwise noted.

§ 831.1201 Introduction.

This subpart sets out the requirements an employee must meet to qualify for disability retirement, how an employee applies for disability retirement, how an agency applies for disability retirement for an employee, when a disability annuity ends, an individual's retirement rights after the disability annuity ends, and the effect of reemployment in the Federal service on a disability annuitant.

§ 831.1202 Definitions.

As used in this subpart—

Accommodation means an adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Reasonable accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and reassigning or retraining the employee.

Basic pay means the pay an employee receives that is subject to civil service retirement deductions. The definition

is the same as the definition of “basic pay” under 5 U.S.C. 8331(3).

Commuting area means the geographic area that usually constitutes one area for employment purposes. It includes a population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily from home to work in their usual employment.

Disabled and *disability* mean unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position, or in a vacant position in the same agency at the same grade or pay level for which the individual is qualified for reassignment.

Examination and *reexamination* mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of a physician, the cost of providing medical documentation rests with the employee or disability annuitant, who must provide any information OPM needs to make an evaluation.

Medical condition means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of “medical condition” as in § 339.104 of this chapter.

Medical documentation and *documentation of a medical condition* mean a statement from a licensed physician or other appropriate practitioner that provides information OPM considers necessary to determine an individual's entitlement to benefits under this subpart. Such a statement must meet the criteria set forth in § 339.104 of this chapter.

Permanent position means an appointment without time limitation.

Physician and *practitioner* have the same meanings given in § 339.104 of this chapter.

Qualified for reassignment means able to meet the minimum requirements for the grade and series of the vacant position in question.

Same grade or pay level means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or

schedule is at the “same pay level” if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee’s current position.

Useful and efficient service means (1) acceptable performance of the critical or essential elements of the position; and (2) satisfactory conduct and attendance.

Vacant position means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee’s current position is less than full time, in which case the vacant position must have a work schedule of no less time than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§ 831.1203 Basic requirements for disability retirement.

(a) Except as provided in paragraph (b) of this section, the following conditions must be met for an individual to be eligible for disability retirement:

(1) The individual must have completed at least 5 years of civilian service that is creditable under the Civil Service Retirement System.

(2) The individual must, while employed in a position subject to the Civil Service Retirement System, have become disabled because of a medical condition, resulting in a service deficiency in performance, conduct, or attendance, or if there is no actual service deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position.

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed.

(4) The employing agency must be unable to accommodate the disabling

medical condition in the position held or in an existing vacant position.

(5) An application for disability retirement must be filed with the employing agency before the employee or Member separates from service, or with the former employing agency or the Office of Personnel Management (OPM) within 1 year thereafter. This time limit can be waived only in certain instances explained in § 831.1204.

(b) A National Guard technician who is retiring under the special provisions of 5 U.S.C. 8337(h) is not required to meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

[58 FR 49179, Sept. 22, 1993, as amended at 63 FR 17049, Apr. 8, 1998]

§ 831.1204 Filing disability retirement applications: General.

(a) Except as provided in paragraphs (c) and (d) of this section, an application for disability retirement is timely only if it is filed with the employing agency before the employee or Member separates from service, or with the former employing agency or OPM within 1 year thereafter.

(b) An application for disability retirement that is filed with OPM, an employing agency or former employing agency by personal delivery is considered filed on the date on which OPM, the employing agency or former employing agency receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the application is presumed to have been mailed 5 days before its receipt, excluding days on which OPM, the employing agency or former employing agency, as appropriate, is closed for business. The date of filing by commercial overnight delivery is the date the application is given to the overnight delivery service.

(c) An application for disability retirement that is filed with OPM or the applicant’s former employing agency